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RECENT DECISIONS

Editor—PHILIP V. MANNING, JR.

CONDITIONAL SALE CONTRACT—FAILURE TO FILE—RIGHTS OF TRUSTEE IN BANKRUPTCY.—Plaintiff sued to obtain the return or the value of fixtures delivered to the Adeline Building Corporation, whose trustee in bankruptcy, Irving Trust Company, was substituted as defendant. The Adeline company was erecting an apartment house and secured a building loan and first mortgage from a title company. The mortgage covered not only the real property but also the personal property by providing: "Together with all fixtures and articles of personal property, now or hereafter attached to, or used in connection with the premises, all of which are covered by this mortgage." On March 14th, 1929, the plaintiff sold to the Adeline company certain lighting fixtures pursuant to a conditional bill of sale, which provided that the plaintiff retained title to the said fixtures until full payment was made therefor. On April 23rd the title company made the final advance under the building loan and mortgage. On that date all the fixtures covered by the conditional bill of sale had been delivered at the mortgaged premises, but only half of them had been set up or attached thereto. The other half was lying loose and unattached in the various rooms of the building. Plaintiff failed to file its conditional bill of sale until after this advance by the title company. Plaintiff contended that the trustee had no greater rights than the purchaser. Defendant claimed that the plaintiff's failure to file the conditional sale contract voided plaintiff's title to both attached and unattached fixtures as against the mortgagee. Appellate Division affirmed a judgment for the defendant. *Held*, the trustee in bankruptcy had the right to assert the invalidity of the conditional bill of sale and plaintiff was entitled to the return or value of the unattached fixtures at the time of the last advance made by the title company. *Central Chandelier Co. v. Irving Trust Company*, 259 N. Y. 343, 182 N. E. 10 (1932).

The Personal Property Law provides that a conditional bill of sale shall be void as against subsequent purchasers, for value and without notice, where there has been a failure to properly file the conditional sale contract before such purchase.¹ The same Personal Property Law defines "purchaser" to include a mortgagee.²

¹ N. Y. PERS. PROP. LAW (1922) §67; *Kohler v. Brasun*, 249 N. Y. 224, 164 N. E. 31 (1928); *Madfes v. Beverly Development Corp.*, 251 N. Y. 12, 166 N. E. 787 (1929); *Kommel v. Herb-Gner Construction Co.*, 256 N. Y. 333, 176 N. E. 413 (1931); *Otis Elevator Co. v. Rochester Friendly Home*, 103 Misc. 76, 169 N. Y. Supp. 389 (1918).

² N. Y. PERS. PROP. LAW (1922, amended L. 1930, c. 874, §1, L. 1932, c. 212, §1) §61; *Kommel v. Herb-Gner Construction Co.*, *supra* note 1.

The title company was, therefore, a *bona fide* purchaser within the intention of that law and the conditional bill of sale was void as to the fixtures included within the terms of the mortgage.³ Inasmuch as the chattel mortgage clause of the title company's mortgage applied only to fixtures attached, or used in connection with the premises, it did not include those fixtures which were unattached and lying loose in the various rooms of the mortgaged premises. Not having been attached, this type of fixture could not be of any use in connection with the premises. Plaintiff was entitled to the return or value of the unattached fixtures.⁴ Previous to 1910 it was held that if an unrecorded conditional sale contract was valid as against the bankrupt-purchaser, then it was valid as against the trustee in bankruptcy.⁵ In 1910 an amendment to the U. S. Bankruptcy Act provided that a trustee in bankruptcy shall be vested with all the rights and remedies of a creditor holding a lien by equitable or legal proceedings and of a judgment-creditor holding an execution duly returned unsatisfied.⁶ Therefore, the trustee in bankruptcy had a right to contest the validity of plaintiff's conditional bill of sale and as against him, it was void as hereinbefore indicated. Furthermore, by maintaining the validity of the title company's mortgage, the trustee is performing his duty of preserving the assets of the bankrupt estate, for he will thereby prevent or reduce a possible deficiency judgment against the bankrupt.⁷

J. P.

³ *Madfes v. Beverly Development Corpn.*, *supra* note 1; *Cohen v. 1165 Fulton Ave. Corpn.*, 251 N. Y. 24, 166 N. E. 792 (1929); *Curry v. Geier Construction Co., Inc.*, 225 App. Div. 498, 234 N. Y. Supp. 59 (1929); *Lloyd's First Mortgage Corp. v. Lombardo*, 227 App. Div. 400, 237 N. Y. Supp. 456 (1929).

⁴ *Kirk v. Crystal*, 118 App. Div. 32, 103 N. Y. Supp. 17 (1908), *aff'd*, 193 N. Y. 622, 86 N. E. 1126 (1908); *McCloskey v. Henderson*, 231 N. Y. 130, 131 N. E. 865 (1921).

⁵ *Yorke Mfg. Co. v. Cassell*, 201 U. S. 344, 26 Sup. Ct. 481 (1905). It was after this decision that action was taken to bring about an amendment to the U. S. Bankruptcy Act.

⁶ U. S. Bankruptcy Act (1898, as amended in 1910) §47a2; U. S. Bankruptcy Act (1898) §70a5; *In re Bazemore*, 189 Fed. 236 (N. D. Ala. 1911); *In re Kreuger*, 199 Fed. 367 (E. D. Ky. 1912); *Potter Mfg. Co. v. Arthur*, 220 Fed. 843 (C. C. A. 6th, 1915); *American & British Securities Co. v. American & British Mfg. Co.*, 275 Fed. 121 (S. D. N. Y. 1921); *Matter of F. L. Bradbury Co., Bkrpt.*, 8 F. (2d) 496 (S. D. N. Y. 1925), *aff'd*, 8 F. (2d) 500 (C. C. A. 2d, 1925); *Skilton v. Codington*, 185 N. Y. 80, 77 N. E. 790 (1906); *COLLIER, BANKRUPTCY* (12th ed. 1921) 728-735. It is to be noted that an assignee for the benefit of creditors may attack the validity of a chattel mortgage or conditional sale contract in the same manner as a trustee in bankruptcy. N. Y. DEBTOR AND CREDITOR LAW (1914) §17; N. Y. PERS. PROP. LAW (1909) §19; *Stich v. Pirkl*, 100 Misc. 594, 166 N. Y. Supp. 440 (1917).

⁷ *McCloskey v. Henderson*, *supra* note 4.